

Lee Lai Ban (trading as sole proprietor under the name and style of ‘Sang Excavation Services’) v Kang Hai Holdings Sdn Bhd & Anor and another appeal

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS J-02(NCVC)(W)-2119–12 OF 2014 AND J-02(NCVC) (W)-2073–12 OF 2014

B

LIM YEE LAN, ZAWAWI SALLEH AND VERNON ONG JJCA
2 DECEMBER 2015

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Civil Procedure — Appeal — Appeal against judgment of the High Court — Respondents claimed for accounts and damages for fraud, forgery and trespass to land and conversion — Whether fraud and forgery proven — Whether first appellant had knowledge of his removal as director — Whether second appellant relied on first appellant’s representation — Whether second appellant entitled to invoke protection under rule in Turquand’s case

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The respondents/plaintiffs were the registered owner of land identified as Lots 2929, 2930 and 2989. The first appellant/first defendant was a former director of respondents’ company. He was removed as a director of the first respondents and thereafter resigned as a director of the second respondent. The second appellant/second defendant was a contractor engaged in the business of extracting and selling red earth. Sometime in 2001, the first respondent obtained a permit to extract, remove and transport red earth and rock material from Lots 2929 and 2930. However, the learned judge found that there was no evidence to show that the permit for Lots 2929 and 2930 was renewed since 31 January 2001 and no permit was issued for Lot 2989. There were representations made by the first appellant to the second appellant that he was the general manager and director of the respondents company and that the land belonged to the respondents. By a letter dated 1 September 2009 (‘the letter’), the first respondent appointed the second appellant to extract and sell red earth from Lots 2929 and 2930 for a period of three years; and all transactions thereunder shall be made through the managing director, Lim Thian Hock, or the manager and director the second appellant. Thereafter, the second appellant entered into tenancy agreement (‘the tenancy agreement’) with the first respondent for Lots 2929 and 2930 for a period of three years. Pursuant to the letter and the tenancy agreement, the second appellant extracted and sold the red earth from Lots 2929 and 2930 and continued to transact with the first appellant. The respondents subsequently brought an action against the appellants for accounts and damages for fraud, forgery and trespass to land and conversion. The trial court allowed the claim and dismissed the second appellant’s counterclaim. Hence, this appeal. The first appellant

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- A submitted firstly that the respondents did not prove their case in fraud and forgery as Lim was not called by the respondents, consequently, the adverse inference under s 114(g) of the Evidence Act 1950 ('the Act') should be invoked. Secondly, the learned judge did not consider the issue of whether the first appellant's appointment as the general manager pursuant to the letter dated 1 July 2009 signed by Mr Lim was valid. The second appellant submitted that they relied on the authority of the first appellant, the letter and the tenancy agreement to extract red earth and rock materials from Lots 2929 and 2930. Further, the second appellant argued that they met Lim at the excavation sites and he did not object to the excavation works, as such the second appellant was entitled to invoke the rule in *Turquand's* case. On the other hand, the respondents contended that vide the impugned documents the first appellant had fraudulently held himself out as a director and dealt with the respondents' property. The respondents further argued that the first appellant had received an undisclosed sum of money from the second appellant and never paid it to the respondents.

Held, dismissing the first appellant's appeal and allowing the second appellant's appeal with costs:

- E (1) It was incumbent upon the first appellant to call Lim Thian Hock to support his contention that he was authorised by Lim Thian Hock pursuant to the authorisation letters (s 103 of the Act). The learned judge did consider the fact that at the material time the first appellant was not a director of the respondents' companies and that the first appellant had knowledge of his removal as a director. The court was of the view that insofar as the decision of the learned judge related to the first appellant, there was no appealable error warranting appellate intervention (see paras 19–21).
- G (2) On the evidence, it was quite clear that the second appellant transacted with the first appellant for the extraction and sale of the red earth and rock material in Lots 2929 and 2930. This was corroborated by the oral evidence of the first appellant and other documentary evidence ie (a) the letter by the first respondent allowing the second appellant to extract and sell red earth; and (b) s 5 of the second schedule of the tenancy agreement which provides that the purpose for the use of the land as the contract of sale of red earth belonging to the first respondent to the second appellant. In further corroboration, the first appellant admitted receiving payments from the second appellant pursuant to the agreement and had paid the monies to Lim Thian Hock. Invoices bearing the second respondent's name were issued by the first appellant to the second appellant for the payments received (see paras 23–24).
- I (3) On the totality of the evidence, the court was satisfied that the second appellant was entitled to invoke the protection under the rule in

Turquand's case. On the appeal record, there was no evidence to show that the second appellant had any notice that the first appellant had any lack of authority. There was also no evidence to show that there were circumstances subsisting which would have put the second appellant upon enquiry and that the second appellant failed to make such enquiries (see paras 30–31).

[Bahasa Malaysia summary]

Responden-responden/plaintif-plaintif ialah pemilik tanah dikenali sebagai Lot-Lot 2929, 2930 dan 2989. Perayu pertama/defendan pertama ialah bekas pengarah syarikat responden. Dia telah disingkir sebagai pengarah kepada responden pertama dan kemudian meletak jawatan sebagai pengarah responden kedua. Perayu kedua/defendan kedua ialah kontraktor yang dilantik dalam perniagaan mengeluarkan dan menjual tanah merah. Sekitar 2001, responden pertama telah memperoleh permit untuk mengeluarkan, mengalih dan mengangkut tanah merah dan bahan batuan dari Lot-Lot 2929 dan 2930. Walau bagaimanapun, hakim bijaksana mendapati bahawa tidak terdapat keterangan untuk menunjukkan bahawa permit untuk Lot-Lot 2929 dan 2930 telah diperbaharui sejak 31 Januari 2001 dan tiada permit telah dikeluarkan untuk Lot 2989. Representasi telah dibuat oleh perayu pertama kepada perayu kedua bahawa dia adalah pengurus besar dan pengarah syarikat responden-responde dan bahawa tanah itu adalah milik responden-responden. Melalui surat bertarikh 1 September 2009 ('surat itu'), responden pertama telah melantik perayu kedua untuk mengeluarkan dan menjual tanah merah dari Lot-Lot 2929 dan 2930 bagi tempoh tiga tahun; dan semua transaksi tersebut hendaklah dibuat melalui pengarah urusan, Lim Thian Hock, atau pengurus dan pengarah kepada perayu kedua. Selepas itu, perayu kedua telah memasuki perjanjian penyewaan ('perjanjian penyewaan tersebut') dengan responden pertama untuk Lot-Lot 2929 dan 2930 bagi tempoh tiga tahun. Menurut surat itu dan perjanjian penyewaan itu, perayu kedua telah mengeluarkan dan menjual tanah merah dari Lot-Lot 2929 dan 2930 dan berterusan telah melakukan transaksi dengan perayu pertama. Responden-responden kemudian telah memulakan tindakan terhadap perayu-perayu untuk akaun dan kerosakan untuk fraud, pemalsuan dan pencerobohan kepada tanah dan penukaran. Mahkamah perbicaraan membenarkan tuntutan itu dan menolak tuntutan balas perayu kedua. Justeru, rayuan ini. Perayu pertama berhujah pertamanya bahawa responden-responden tidak membuktikan kes mereka untuk fraud dan pemalsuan kerana Lim tidak dipanggil oleh responden-responden, berikutan itu, inferens bertentangan di bawah s 114(g) Akta Keterangan 1950 ('Akta tersebut') hendaklah digunakan. Kedua, hakim bijaksana tidak mempertimbangkan isu sama ada pelantikan perayu pertama sebagai pengurus am menurut surat bertarikh 1 Julai 2009 ditandatangani oleh Encik Lim adalah sah. Perayu kedua berhujah bahawa mereka bergantung kepada autoriti perayu pertama, surat itu dan perjanjian penyewaan untuk mengeluarkan tanah merah dan bahan batuan dari Lot-Lot 2929 dan 2930.

- A Selanjutnya, perayu kedua berhujah bahawa mereka berjumpa Lim di tapak pengeluaran itu dan dia tidak membantah kerja pengeluaran itu, oleh itu perayu kedua berhak untuk menggunakan rukun dalam kes *Turquand*. Sebaliknya, responden-responden menegaskan bahawa melalui dokumen yang dipersoalkan perayu pertama secara fraud mengandaikan dirinya sebagai
- B pengarah dan mengendalikan hartanah responden-responden. Responden-responden selanjutnya berhujah bahawa perayu pertama telah menerima jumlah wang yang tidak didedahkan daripada perayu kedua dan tidak pernah membayarnya kepada responden-responden.
- C **Diputuskan**, menolak rayuan pertama dan membenarkan rayuan perayu kedua dengan kos:
- (1) Adalah wajib ke atas perayu pertama untuk memanggil Lim Thian Hock bagi menyokong hujahnya bahawa dia telah diberi kuasa oleh Lim Thian Hock menurut surat-surat kebenaran (s 103 Akta tersebut). Hakim
- D bijaksana telah mempertimbangkan fakta bahawa pada masa matan perayu pertama bukan pengarah syarikat-syarikat responden-responden dan bahawa perayu pertama mempunyai pengetahuan tentang penyingkirannya sebagai pengarah. Mahkamah berpendapat bahawa
- E sejauhmana keputusan hakim bijaksana berkaitan dengan perayu pertama, tiada kesilapan yang boleh dirayukan yang mewajarkan campur tangan rayuan (lihat perenggan 19–21).
- (2) Berdasarkan keterangan itu, ia agak jelas bahawa perayu kedua telah
- F berurus niaga dengan perayu pertama untuk pengeluaran dan jualan tanah merah dan bahan batuan dalam Lot-Lot 2929 dan 2930. Ini telah disokong oleh keteranga lisan perayu pertama dan keterangan dokumentar lain iaitu (a) surat oleh responden pertama membenarkan perayu kedua untuk mengeluarkan dan menjual tanah merah; dan (b) s 5
- G jadual kedua kepada perjanjian penyewaan yang memperuntukkan bahawa tujuan penggunaan tanah tersebut sebagai kontrak jualan tanah merah milik responden pertama kepada perayu kedua. Sokongan selanjutnya, perayu pertama mengaku telah menerima bayaran daripada perayu kedua menurut perjanjian itu dan telah membayar wang itu kepada Lim Thian Hock. Invois-invois dengan nama responden kedua
- H telah dikeluarkan oleh perayu pertama kepada perayu kedua untuk bayaran-bayaran yang diterima (lihat perenggan 23–24).
- (3) Berdasarkan keseluruhan keterangan, mahkamah berpuas hati bahawa perayu kedua berhak menggunakan perlindungan di bawah rukun dalam kes *Turquand*. Atas rekod rayuan, tiada keterangan untuk menunjukkan bahawa perayu kedua mempunyai apa-apa notis yang perayu pertama tidak mempunyai apa-apa kuasa. Juga tidak terdapat keterangan untuk menunjukkan terdapat keadaan yang wujud bagi membolehkan perayu kedua disiasat dan bahawa perayu kedua telah gagal membuat siasatan
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sedemikian (lihat perenggan 30–31).]

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Notes

For cases on appeal against judgment of the High Court, see 2(1) *Mallal's Digest* (5th Ed, 2015) paras 913–915.

B

Cases referred to

JC Houghton & Co v Nothard, Lowe and Wills Ltd [1928] AC 1, HL (refd)
Juahir bin Sadikon v Perbadanan Kemajuan Ekonomi Negeri Johor [1996] 3 MLJ 627, CA (refd)

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Kreditbank Cassel GmbH v Schenkers, Ltd, and Others [1927] 1 KB 826, CA (refd)

Mahfuz bin Hashim v Koperasi Pekebun Kecil Daerah Segamat & Ors [2005] 3 MLJ 726, HC (refd)

Mahony v East Holyford Mining Co (1875) LR 7 HL 869, HL (refd)

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Morris v Kanssen [1946] AC 459, HL (refd)

Northside Developments Pty Ltd v Registrar-General (1990) 170 CLR 146; [1990] 8 ACLC 611, HC (refd)

Patent Ivory Manufacturing Co, Howard Re, v Patent Ivory Manufacturing Co (1888) 38 Ch D 156, Ch D (refd)

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Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen & Ors [1998] 1 MLJ 465, FC (refd)

Public Bank Bhd v Metro Construction Sdn Bhd [1991] 3 MLJ 56; [1991] 1 CLJ 787, HC (refd)

Royal British Bank v Turquand [1843–60] All ER Rep 435; [1856] 119 ER 886 (refd)

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Woodland Development Sdn Bhd v Chartered Bank; Pjtv & Densun (M) Sdn Bhd (third party) [1986] 1 MLJ 84 (refd)

Legislation referred to

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Evidence Act 1950 s 103

Appeal from: Civil Suit No 23NCVC-9–12 of 2011 (High Court, Muar)

HY Lee (Lee Han Yen & Co) in Civil Appeal No J-02(NCVC)(W)-2119–12 of 2014 for the plaintiff.

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Aliff Benjamin (Malini Subramaniam with him) (Thomas Philip) in Civil Appeal No J-02(NCVC)(W)-2073–12 of 2014 for the plaintiff.

Harvinderjit Singh (Tan Sze Chze with him) (Vin Partnership) in Civil Appeal No J-02(NCVC)(W)-2119–12 of 2014 for the respondents.

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Harvinderjit Singh (Tan Sze Chze with him) (Vin Partnership) in Civil Appeal No J-02(NCVC)(W)-2073–12 of 2014 for the respondents.

A Vernon Ong JCA:

INTRODUCTION

B [1] Both appeals stem from the decision of the High Court sitting at Muar given on 30 October 2014. After a full trial of the action, the High Court allowed the plaintiffs' claim against the first and second defendants for accounts and damages for fraud, forgery and trespass to land and conversion; the second defendant's counterclaim was dismissed.

C [2] Appeal No 2073 is the first defendant's appeal whilst Appeal No 2119 is the second defendant's appeal. In this judgment, the parties shall be referred to as they were in the court below.

D BACKGROUND OF THE SALIENT FACTS

[3] The first plaintiff is the registered owner of two pieces of land identified as Lots 2929 and 2930. The second plaintiff is the registered owner of one piece of land identified as Lot 2989.

E [4] The first defendant was a former director of the plaintiffs; he was removed as a director of the first plaintiff company on 15 September 2008. He resigned as a director of the second plaintiff company on 19 October 2009.

F [5] The second defendant is a contractor engaged in the business of extracting and selling red earth in Batu Pahat.

G [6] Sometime in 2001, the first plaintiff obtained a permit to extract, remove and transport red earth and rock material from Lots 2929 and 2930 from the Pejabat Tanah Batu Pahat. On 4 January 2006, an application was made by the first plaintiff for the renewal of the permit; however, there is no evidence to indicate if the permit was renewed. On 12 December 2006, the first plaintiff made an application to the Pejabat Tanah Batu Pahat for a permit. At any rate, **H** the learned judge found that there is no evidence to show that the permit for Lots 2929 and 2930 was renewed since 31 January 2001. No permit was issued for Lot 2889.

I [7] The first defendant made the following representations to the second defendant:

- (a) that the first defendant was the general manager and director of the first and second plaintiffs; and
- (b) that the land belonged to 'Kang Hai'

[8] By a letter dated 1 September 2009 ('the 2009 letter') issued under the first plaintiff's letterhead addressed to the second defendant, the first plaintiff appointed the second defendant to extract and sell red earth from Lots 2929 and 2930 for a period of three years. It was also stated in the letter that all transactions thereunder shall be made through the managing director, Mr Lim Thian Hock, or the manager and director the second defendant.

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[9] On 8 September 2009, the second defendant entered into a tenancy agreement ('the tenancy agreement') with the first plaintiff where the second defendant was granted a tenancy of Lots 2929 and 2930 for the period of three years from 8 September 2009–7 August 2012.

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[10] Pursuant to the 2009 letter and tenancy agreement, the second defendant extracted and sold the red earth from Lots 2929 2930. Meanwhile, the second defendant continued to transact with the first defendant.

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THE PLAINTIFFS' CASE

[11] The plaintiffs' claim is predicated on the following facts:

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- (a) the first defendant fraudulently held himself out as a director and manager of the first plaintiff and forged the letter dated 1 September 2009 which purported to engage the second defendant to extract and purchase red earth and rock materials from the first plaintiff's lands;
- (b) the first defendant fraudulently held himself out to the Batu Pahat Land Office as an authorised officer of the first plaintiff and forged a memo for the purposes of renewing a permit for the extraction of rock materials from Lots 2929 and 2930 for a period of one year commencing from 1 January 2010;
- (c) from late 2009 to the end of 2010, the second defendant acting under the directions of the first defendant gained unlawful entry on the land and extracted and removed red earth and rock materials therefrom;
- (d) at all material times, the second defendant knew that the first defendant was not an authorised representative of the plaintiffs and or chose to be oblivious to this despite clear circumstances that would have justified an enquiry into the same;
- (e) the second defendant was put on notice of the illegal trespass on the plaintiffs' land and conversion of the red earth and rock material at a meeting on 2 September 2010 between the representatives of the plaintiffs and the second defendant; and

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- A** (f) during this period, the first defendant received monies from the second defendant as payment for the purchase of the red earth and rock materials extracted from the land. These payments were far below the market value of materials similar to 'red earth'.

B THE FIRST DEFENDANT'S DEFENCE

[12] In summary, the defence of the first defendant is premised on the following facts:

- C** (a) the first defendant was a director of the first plaintiff at all material times;
 (b) the first defendant was not aware of his purported removal as director;
 (c) any removal of the first defendant as a director of the first plaintiff is unlawful and null and void;
- D** (d) vide two letters dated 1 July 2009 and 26 January 2010 respectively, Mr Lim Thian Hock, the managing director and owner of the plaintiffs had appointed the first defendant as the general manager of the Kang Hai Group of companies and had delegated all powers and duties of managing the first and second plaintiff companies to the first defendant;
- E** (e) the first defendant was at all times acting with authority and with the instructions of Mr Lim Thian Hock pursuant to the letters dated 1 July 2009 and 26 January 2010 respectively;
- F** (f) the extraction and removal of the red earth from the plaintiff's lands by the second defendant was done pursuant to a valid contract between the plaintiffs and the second defendant;
- (g) the first defendant was authorised to collect payment and manage the plaintiffs' properties pursuant to a letter dated 15 February 2010 signed by Mr Lim Thian Hock; and
- G** (h) the monies collected by the first defendant under the contract were given to the plaintiffs or Mr Lim Thian Hock on behalf of the plaintiffs.

THE SECOND DEFENDANT'S DEFENCE AND COUNTERCLAIM

- H** **[13]** The second defendant's defence is premised on two grounds. First, the second defendant paid a deposit of RM10,000 to the first plaintiff for the red earth in April 2009. In May 2009, he was given an offer by Lim Thian Hock in a letter dated 19 May 2009. Second, he relied on the first defendant's representations in his dealings with him. Third, he lawfully extracted and removed red earth and rock material from Lots 2929 and 2930 pursuant to the 2009 letter and the tenancy agreement. According to section No 5 of the Second Schedule of the tenancy agreement, the use of the land was for the purpose of the contract for the sale of red earth belonging to the first plaintiff
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[14] The second defendant's counterclaim is for loss of profits for breach of the 2009 letter and the tenancy agreement. A

FINDINGS OF THE HIGH COURT

[15] The findings of the learned judge may be summarised as follows: B

- (a) the first defendant knew of his removal as a director of the first plaintiff company; C
- (b) the first defendant did not have any authority to act on behalf of the plaintiffs; C
- (c) there is no evidence to show that the first defendant was given any authority by Mr Lim Thian Hock; D
- (d) the letter of authority dated 26 January 2010 purportedly signed by Lim Thian Hock is not valid; and D
- (e) the tenancy agreement did not give the second defendant the contractual right to extract red earth and rock material from Lots 2929 and 2930. D

SUBMISSION E

[16] Before us, learned counsel for the first defendant argued firstly that the plaintiffs did not prove their case in fraud and forgery. The adverse inference under s 114(g) of the Evidence Act 1950 should be invoked for the non-calling of Lim Thian Hock by the plaintiffs. Secondly, the learned judge did not consider the issue of whether the first defendant's appointment as the general manager pursuant to the letter dated 1 July 2009 signed by Lim Thian Hock is valid. F

[17] Learned counsel for the second defendant submitted that the second defendant relied on the authority of the first defendant and on the 2009 letter and the tenancy agreement to extract red earth and rock materials from Lots 2929 and 2930. It was also submitted that the second defendant met Lim Thian Hock at the excavation sites and that he did not object to the second defendant's excavation works carried on therein. The second defendant is entitled to invoke the rule in *Turquand's* case. G H

DECISION

The first defendant I

[18] We agree with the submission of learned counsel for the plaintiffs that contrary to the first defendant's submissions, the case for the plaintiffs was never that the first defendant had forged the signature of Lim Thian Hock on

- A** the impugned documents or that the first defendant had fraudulently utilised Lim Thian Hock's authority. The plaintiffs' pleaded case is that (a) vide the impugned documents the first defendant had fraudulently held himself out as being a director and authorised officer and dealt with the plaintiffs' property, and (b) that the first defendant had received an undisclosed sum of money from
- B** the second defendant and these monies were never paid to the plaintiffs.

- C** [19] Accordingly, it was incumbent upon the first defendant to call Lim Thian Hock to support his contention that he was authorised by Lim Thian Hock pursuant to the authorisation letters (s 103 of the Evidence Act 1950; *Juahir bin Sadikon v Perbadanan Kemajuan Ekonomi Negeri Johor* [1996] 3 MLJ 627).

- D** [20] We agree with the submission of learned counsel for the plaintiffs that the learned judge did consider the fact that at the material time the first defendant was not a director of the plaintiffs companies. The first defendant had knowledge of his removal as a director.

- E** [21] We have perused the appeal record and are satisfied that there is no misdirection on the evidence or any misapprehension of the facts by the learned judge. Accordingly, we are of the view that insofar as the decision of the learned judge relates to the first defendant, there is no appealable error warranting appellate intervention on our part.

- F** *The second defendant*

- G** [22] On the evidence, it is quite clear that the second defendant transacted with the first defendant for the extraction and sale of the red earth and rock material in Lots 2929 and 2930.

- H** [23] The fact that the second defendant relied on the representations of the first defendant is corroborated by the oral evidence of the first defendant and other documentary evidence — (a) the 2009 letter issued under the first plaintiff's letterhead addressed to the second defendant whereby the first plaintiff appointed the second defendant to extract and sell red earth from Lots 2929 and 2930 for a period of three years; and (b) section No 5 of the Second Schedule of the tenancy agreement which provides that the purpose for the use of the land as the contract of sale of red earth belonging to the first plaintiff to the second defendant. What is also significant is that (a) the first defendant was
- I** a director of the plaintiff companies until his removal, (b) the second defendant's evidence that Lim Thian Hock met him at the excavation site where Lim Thian Hock reminded him to do his work well and to cooperate with the first defendant. As such, it is probable that Lim Thian Hock acquiesced to the extraction activities undertaken by the second defendant and

to the first defendant's apparent authority as an agent for the plaintiffs. Lim Thian Hock was the managing director of both plaintiff companies at the material time when the agreement was reached in September 2009; he only resigned on 28 April 2010.

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[24] In further corroboration of the second defendant's version of events, the first defendant admitted receiving payments from the second defendant pursuant to the agreement and had paid the monies to Lim Thian Hock. Invoices bearing the second plaintiff's name were issued by the first defendant to the second defendant receipts issued for payments received.

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[25] We note that the second defendant was cross-examined on why he did not conduct a search at the land office to determine the ownership of the land and why he did not conduct a SSM search on the plaintiff companies. The second defendant admitted that he did not. He came to know of the land through a third party. He said that the 'Kang Hai' group of companies were well known in Batu Pahat. He also said under cross-examination that he knew that the first defendant was a senior person in the Kang Hai. The second defendant further said that he carried out the extraction activities on the land as a tenant and not as a contractor.

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[26] In our view, the sole issue for determination relates to the question of whether the indoor management rule also known as the rule in *Turquand's* case applies. And if so, whether any of the exceptions to the said rule applies to the facts of this case.

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[27] The rule in *Turquand's* case, also described as an evidential presumption of legality is an established common law rule. The rule states that while parties dealing with a company are taken to have constructive knowledge of the contents of the company's public documents, they need not go further to ensure that the internal proceedings of the company have been properly carried out. In other words, the rule protects an outsider who enters into a transaction with a company, and who is sued is entitled to invoke the benefit of the rule (*Royal British Bank v Turquand* [1843-60] All ER Rep 435; [1856] 119 ER 886; *Mahony v East Holyford Mining Co* (1875) LR 7 HL 869 (HL); *Public Bank Bhd v Metro Construction Sdn Bhd* [1991] 3 MLJ 56; [1991] 1 CLJ 787; *Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen & Ors* [1998] 1 MLJ 465 (FC)).

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[28] Be that as it may, the rule in *Turquand's* case is subject to a number of exceptions. The first exception arises when the outsider has notice of the lack of authority of the agent (*Patent Ivory Manufacturing Co, Re, Howard v Patent Ivory Manufacturing Co* (1888) 38 Ch D 156; *Mahfuz bin Hashim v Koperasi Pkebun Kecil Daerah Segamat & Ors* [2005] 3 MLJ 726). The second

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- A** exception arises when an outsider with no actual knowledge of the irregularity is put upon enquiry by the circumstances of the case and fails to make inquiries (*Morris v Kanssen* [1946] AC 459; *Kreditbank Cassel GmbH v Schenkers, Ltd, and Others* [1927] 1 KB 826; *JC Houghton & Co v Nothard, Lowe and Wills Ltd* [1928] AC 1; *Northside Developments Party Ltd v Registrar General* [1990] 8 ACLC 611; *Woodland Development Sdn Bhd v Chartered Bank; Pjtv & Densun (M) Sdn Bhd (third party)* [1986] 1 MLJ 84; *Pekan Nenas*).
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[29] We observe that the learned judge dismissed the second defendant's defence on the ground that the first defendant did not have any authority to enter into the contract with the second defendant. With respect, we find that there was a failure to judicially appreciate the following evidence:

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- (a) on 28 April 2009 the second defendant had paid a sum of RM10,000 to the second plaintiff as a deposit for the transaction for which he was issued an official receipt;
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- (b) subsequently, the second defendant was given a written offer on the second plaintiff's letterhead dated 19 May 2009 by Lim Thian Hock;
- (c) the second defendant was dealing with the first defendant who was at the material time a former director of the first plaintiff company and a serving director of the second plaintiff company;
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- (d) the first defendant represented to the second defendant that he was the general manager and director of the first and second plaintiffs;
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- (e) the second defendant did not know that the first defendant had been removed as a director of the first plaintiff company on 15 September 2008;
- (f) the second defendant relied on the letters of authority issued on the first plaintiff's letterheads; and
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- (g) Lim Thian Hock acquiesced to the transaction when he paid a visit to the excavation site.

[30] On the totality of the abovementioned evidence, we are satisfied that the second defendant is entitled to invoke the protection under the rule in *Turquand's* case.

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[31] We are also satisfied that on the appeal record, there is no evidence to show that the second defendant had any notice that the first defendant had any lack of authority. We also find that there is no evidence to show that there are circumstances subsisting which would have put the second defendant upon enquiry and that the second defendant failed to make such enquiries.

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[32] For the foregoing reasons, the first defendant's Appeal No 2073 is

dismissed with costs. The second defendant's Appeal No 2119 is allowed with costs. Consequently, we order the second defendant's counterclaim to be remitted to the High Court for damages to be assessed by the deputy registrar.

First appellant's appeal dismissed and second appellant's appeal allowed with costs.

Reported by Dzulqarnain Ab Fatar

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